

IN PRACTICE

DEBTOR-CREDITOR RIGHTS

How To Recognize and Remedy an Unauthorized Financing Statement

BY SCOTT E. REYNOLDS

Recently, individuals including prison inmates and members of antigovernment groups — some considered “domestic terrorists” by the Federal Bureau of Investigation — have been utilizing the relaxed filing requirements of the Uniform Commercial Code (UCC), Article 9, to file and record false UCC-1 financing statements against individuals, companies and law enforcement officials. *See* www.fbi.gov, “Domestic Terrorism, The Sovereign Citizen Movement,” Apr. 13, 2010; Peter A. Crusco, “Combating Inmates’ Use of Bogus UCC-1 Lien Notices,” *N.Y. Law Journal*, Apr. 26, 2011.

The filing of a bogus UCC-1 financing statement can disrupt an individual’s or company’s ability to obtain financing and cause the victim of the false lien scam to incur unne-

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cessary expenses in order to clear the false lien. However, there are ways to recognize the false UCC-1 financing statement scheme and minimize the disruption and expense caused by bogus UCC-1 financing statements.

Often, the lien-filing scheme works like this: The victim receives in the mail a document, appearing to be the ramblings and bizarre accusations of an unstable individual, often styled as a “claim for injury,” “claim for damages” or “demand for restitution.” No matter the title, however, virtually each of the “claims” or “demands” request that the victim provide the author with monetary compensation within a fixed time period to remediate some purported harm sustained by the author. The accusations of wrongdoing may include allegedly unauthorized legal action taken by a judge or law enforcement officer or an assertion that the author suffered personal injuries while on the premises of the recipient’s business.

Notwithstanding the peculiar language contained in the notice, it should not be ignored. It is possible that somewhere among the pages of incoherent text is a copy of a filed UCC-1 financ-

ing statement, claiming a multimillion or even multibillion dollar lien against certain assets of the victim, and that the claim or demand for restitution, in the view of the author, created a valid security agreement between the author and victim (ostensibly in an attempt to comply with Article 9’s requirement that a security agreement be executed between the parties as a condition precedent to the filing of a UCC-1 financing statement).

The perpetrators of these scams have learned that the amendments to Article 9 of the UCC have made the filing of a UCC-1 financing statement quite simple. In fact, by law the filing office (in New Jersey, Department of the Treasury, Division of Revenue) merely engages in a ministerial review of each financing statement presented for filing. The only legal requirements that must be satisfied to file a UCC-1 financing statement are: the name and address of the filer, debtor and secured party along with a description of the collateral subject to the purported lien and the necessary filing fee. *See* N.J.S.A. § 12A:9-502. So long as these requirements are satisfied by the filer, the filing office is required by law to process the filing and record the UCC-1 financing statement.

Of course, the filing of a UCC-1 financing statement without the authorization of the purported debtor or an underlying security agreement does not create a valid security interest. *See* N.J.S.A. § 12A:9-509; *see also United States v. Ramirez*, 291 F. Supp.2d 266, 268 (S.D.N.Y. 2003). However,

because all financing statements are public record, the existence of even a bogus lien may impede or altogether foreclose an individual's or company's ability to obtain financing without first having the lien discharged. As a result, the New Jersey Uniform Commercial Code (NJUCC) provides certain remedies to a victim of an unauthorized financing statement.

The Correction Statement

N.J.S.A. § 12A:9-518 permits a person who believes that a record filed with the filing office "is inaccurate or wrongfully filed" to file a "correction statement" (also known as a UCC-5). The purpose of the correction statement is to provide notice to the public that the debtor identified in the financing statement challenges its validity in part or as a whole. Once filed, the correction statement becomes annexed to the UCC-1 financing statement, thereby providing public notice that the purported debtor disputes a portion or the whole of the financing statement. "[A]lthough a filed correction statement becomes part of the 'financing statement,' ... the filing does not affect the effectiveness of the initial financing statement or any other filed record." N.J.S.A. § 12A:9-518, comment 2. Therefore, while the filing of a correction statement may be a good first step to challenge the bogus filing, it alone is inadequate to fully protect the victim from the potentially detrimental consequences of an unauthorized financing statement.

The Termination Notice

The more effective option at the disposal of a victim of a false lien scam is to file a "termination statement" (also known as a UCC-3) with the filing office. The termination statement authorized by N.J.S.A. § 12A:9-513 differs from the correction statement just dis-

cussed in two important ways.

First, unlike the correction statement, which may be filed by the purported debtor, the termination statement — initially — may only be filed by the secured party identified in the UCC-1 financing statement. N.J.S.A. § 12A:9-513 generally provides that, upon service of an authenticated demand from the debtor that, inter alia, the filing of the financing statement was unauthorized, the secured party identified therein must file a termination statement within 20 days. In enacting N.J.S.A. § 12A:9-513, the New Jersey legislature considered that in most cases involving a bogus lien filing, the putative debtor is not likely to have any relationship with the purported secured party or have reason to know her actual address. In such cases, "the putative secured party is deemed to have 'received' a notification delivered to [the] address listed on the bogus financing statement." *See* N.J.S.A. § 12A:9-518, comment 2. If the putative secured party fails to file the termination statement within 20 days, the purported debtor is authorized to file the termination statement with the filing office. *See* N.J.S.A. § 12A:9-518, comment 3 ("If a termination statement is not forthcoming, the person named as debtor itself may authorize the filing of a termination statement, which will be effective if it indicates that the person authorized it to be filed").

Second, the filing of a termination statement has much more impact than the filing of a correction statement. Pursuant to N.J.S.A. § 12A:9-518(d), the filing of a termination statement with the filing office will render the financing statement ineffective. While the financing statement will remain on file with the filing office for at least one year after it lapses, the termination statement will be annexed to it, giving record notice to the public that the financing statement was terminated.

Additional Remedies for Victims of Bogus Lien Filings

N.J.S.A. § 12A:9-625 provides certain remedies to those harmed by another party's noncompliance with certain provisions of the NJUCC. Specifically, a party that fails to comply with certain sections of the NJUCC may be liable for "loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing," and further damages caused by the noncompliance. *See* N.J.S.A. § 12A:9-625 & comment 2. In addition to the recovery of any of the aforementioned damages, a victim of the filing of a bogus UCC-1 financing statement may recover statutory penalties in the amount of \$500 for each unauthorized filing and each failure to file a termination statement upon receipt of an authenticated demand. *See* N.J.S.A. § 12A:9-625(e)(3) & (e)(4). In particularly egregious cases where a party is repeatedly subjected to false UCC-1 filings, New Jersey courts are statutorily authorized to award injunctive relief to bring about compliance with the law, including the entry of an order compelling the filer to "refrain from filing [further] unauthorized financing statement[s]." N.J.S.A. § 12A:9-625, comment 2.

In sum, it is important to recognize the nature of the bogus UCC-1 financing statement scheme. While the document attaching the false financing statement may appear to be junk mail or something to be disregarded, ignoring it may have detrimental consequences. Thus, it is important to take immediate corrective action to avoid future complications and losses caused by the unauthorized filing of a bogus lien. If the perpetrator of the scheme persists in filing additional false liens after the filing of a correction statement and/or termination statement, a victim should resort to the courts for injunctive relief and an award of damages, as authorized by the NJUCC. ■